

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

FILED 02 SEP '16 15:28 USDC-ORP

AT PORTLAND

ANDREA OLSON,

Plaintiff

v

Case No. 3:15cv02216-HZ

MBO PARTNERS, INC.

Defendants

MOTION FOR APPOINTED COUNSEL AS A REASONABLE ACCOMMODATION

COMES NOW, I, Andrea Olson, and Plaintiff in this matter, respectfully ask this Court again for appointment of counsel. My medical condition significantly impacts my ability to care for myself or my dependent, let alone navigate a complex legal process in order to seek justice.

I have been forced into Pro Se because I have searched for an attorney from anywhere within the United States with no success. Reasons given why attorneys have declined my case (in person, emails, and/or phone calls) have included prohibitive caseload, complexity (joint employers- federal and private sector), my disability, and/or my poverty. I am not able to represent myself because of my disabilities. And I am not an attorney.

I need appointed counsel to assist me because I have a disability of Post-Traumatic Stress Disorder (PTSD) that has significantly impacted my ability to understand what I read and hear, follow instructions, think, concentrate, organize, and communicate clearly. While generally a very conscientious worker, I am currently re-experiencing trauma experienced representing myself Pro Se in the Civilian Board of Contract Appeals (CBCA). It is against my medical provider's recommendation for me to represent myself Pro Se. I need legal help.

It is sickening that as an educated individual with an obvious and non-obvious disability, to be subjected to the humiliation of literally begging on my hands and knees for help. I am a living and breathing human being who possesses the human/civil right to be fairly heard. There are scores of attorneys defending BPA and MBO and I am alone and a non-lawyer. I cannot fathom a team of seasoned lawyers across the country actually feeling professionally and personally victorious should they succeed in silencing my voice from my Constitutional rights to be fairly heard and due process. I am a member of the most oppressed minority group- it is the same as kicking a lame dog that cannot move to get out of harm's way. This is shameful.

In addition, I cannot afford an attorney without causing undue hardship on meeting basic needs for living and supporting a dependent family member.

The Court has given me no clear rationale for ordering me to re-do all of the motions and documents I've submitted to the Court so far into one big document. To be judged on a single large document without the ability to show proof of facts seems unreasonable from a non-lawyer perspective. In addition, no clear step-by-step instructions were given as requested. The directives were ordered despite multiple pleadings to the Court that I need help and I have become significantly disabled.

I have repeatedly asked the Court for help and suffered embarrassment because I cannot think straight despite my expertise in reasonable accommodation. In the process of seeking assistance, I learned that the Court's clerks themselves do not know who is responsible for reasonable accommodation. No one has initiated contact with me to engage in the interactive process. As it is still unknown to me who is responsible for reasonable accommodation in federal court, I have submitted confidential medical documentation addressed to this Court's unnamed "Reasonable Accommodation Coordinator". I respectfully request that this Court permit only those on a 'needs to know' basis to view the documentation and would appreciate being apprised of the names of personnel who view the documentation. It should be noted that historically there has already been several breaches of confidentiality and privacy including the fact that approximately eight people between BPA and MBO discussed my reasonable accommodation requests and I was not involved in the conversation nor did I know who all those people were. Another incident occurred just over a year ago when BPA legal counsel released previously submitted medical information to MBO's legal counsel without my knowledge or consent.

As I am without counsel and my condition has worsened, I am unable to participate within the deadlines given by this district Court. I do not want to delay the legal process any more, but without legal counsel, it is impossible for me to proceed. To date, an advocate, Ms. Dana Hoffman, has assisted me, but even with her help I am unable to keep up with timelines. Given my experiences over the past two and a half years, I do not trust the legal process at all without counsel.

Judicial costs are dear to this Court and other courts, and I do not seek to waste the Court's time.

I need appointment of counsel to maintain judicial economy and avoid estoppel due to untimeliness or having to file endless motions by which I am sure the Court will grow weary. I wish to resolve the matter as soon as possible within a reasonable time schedule issued by the court and appointment of counsel is necessary as a reasonable accommodation.

Here is information on Courts providing reasonable accommodation in the form of legal counsel in civil cases:

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http://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_canon_2.html

RULE 2.2 Impartiality and Fairness- judge shall uphold and apply the law,* and shall perform all duties of judicial office fairly and impartially.*

(4) It is not a violation of this Rule for a Judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

Rule 2.6: Ensuring the Right to Be Heard

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.*

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

OR Rule 3.3 Title is identical to MCJC Rule 2.2 and Rule is similar to MCJC Rules 2.2 and 2.3.

(A) A judge shall uphold and apply the law and perform all duties of judicial office, including administrative duties, fairly, impartially, and without bias or prejudice. (B) A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, or engage in harassment, against parties, witnesses, lawyers, or others based on attributes including but not limited to, sex, gender identity, race, national origin, 3 As of December 11, 2015 ethnicity, religion, sexual orientation, marital status, disability, age, socioeconomic status, or political affiliation and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so. (C) A judge shall not take any action or make any comment that a reasonable person would expect to impair the fairness of a matter pending or impending in any Oregon court.

https://en.wikipedia.org/wiki/Pro_se_legal_representation_in_the_United_States

the right to represent oneself is not absolute. It is the Court's right and duty to determine if a particular individual is capable of representing himself. and can inquire into the individual's lucidity and mental status to make that determination

https://en.wikipedia.org/wiki/Civil_liberties

The passage of the Fourteenth Amendment further protected civil liberties by introducing the Privileges or Immunities Clause, Due Process Clause, and Equal Protection Clause. Human rights within the United States are often called civil rights, which are those rights, privileges and immunities held by all people,

https://www.law.cornell.edu/rules/frcp/rule_17

Fed.R.Civ.P. 17(c).

(c) Minor or Incompetent Person.

(1) *With a Representative.* The following representatives may sue or defend on behalf of a minor or an incompetent person:

- (A) a general guardian;
- (B) a committee;
- (C) a conservator; or
- (D) a like fiduciary.

(2) *Without a Representative.* A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.

In contrast to a criminal proceeding, in which the court has a duty to "assign" counsel to represent a defendant in accordance with his Constitutional right, Rule 44, Federal Rules of Criminal Procedure, 18 U.S.C.A., the court in a **civil** case has the statutory power **only to "request an attorney to represent"** a person unable to employ counsel. Title 28 U.S.C.A. § 1915(d). (Note: this information does not reference cases where disability is present)

We recognize that the Eighth Circuit has apparently taken a different approach, allowing mandatory uncompensated appointment of counsel in **civil cases** under section 1915(d). For example, that court has stated:

The district court ruled that it had no *power* to appoint counsel to represent an indigent in civil cases. This ruling overlooks the express authority given it in 28 U.S.C. § 1915 to appoint counsel in civil cases. This court and other courts of appeals regularly make these appointments in habeas corpus and civil rights cases; district courts throughout the country do the same.

<http://www.washingtonlawhelp.org/resource/how-to-ask-for-a-reasonable-accommodation-of?ref=C3J0Q>

- if you cannot represent yourself in an OAH hearing due to a mental disability, such as a developmental disability, traumatic brain injury or mental illness. **Example:** your disability causes you to not understand what you read, follow instructions, concentrate or communicate clearly.

<http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Access-to-Justice-Board/ATJBLC/~media/73292065DB15413D865E7AB3426806F4.ashx>

3. The United States Constitution and State Court

Because access to the judicial process is a fundamental right, the United States Supreme Court has held that Title II of the ADA (note that I am aware that Title II does not apply to my case but I do not know the cross-reference in the federal sector) is constitutionally valid. In *Tennessee v. Lane*, the Court held that "Title II unquestionably is valid...as it applies to the class of cases implicating the accessibility of judicial services [.]"¹⁹ The Court observed that the "duty to accommodate is perfectly consistent with the well-established due process principle that 'within

the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard' in its courts."20 This applies equally to administrative hearings.21

b. Post-Traumatic Stress Disorder (PTSD) PTSD is a debilitating condition that can occur after one is exposed to a traumatic event in which s/he experienced harm, was threatened with harm, or witnessed someone else experiencing harm. Traumatic events most often associated with PTSD include sexual assault, combat exposure, childhood neglect or abuse, an automobile accident, and physical attack.⁵⁵ Common impairments: difficulty coping with stress and emotions, dealing with change, maintaining concentration, memory deficits, diarrhea/vomiting/nausea, and disorganization.

https://lawreviewdrake.files.wordpress.com/2015/06/irvol61-3_scieszinski.pdf

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

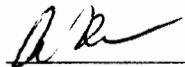
(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation⁸⁵

This motion is not interposed for delay.

WHEREFORE for good cause shown, I Andrea Olson, Plaintiff, respectfully request this court to appoint counsel as a reasonable accommodation because of my disabilities and indigence in the interest of judicial economy and for reasons of ongoing medical/health issues.

Respectfully submitted;



Andrea Olson / Plaintiff
3404 SW Comus St
Portland, Or, 97219
(503) 452-8888
andrea.olson8888@gmail.com
DATED: 09/02/2016

Affidavit of Andrea Olson

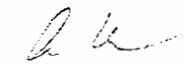
STATE OF OREGON
COUNTY OF MULTNOMAH

The undersigned, ANDREA OLSON, being duly sworn, hereby deposes and says:

1. I am over the age of 18 and am a resident of the State of Oregon. I have personal knowledge of the facts herein, and, if called as a witness, could testify completely thereto.
2. I am not an attorney and I am still in need of legal counsel.
3. I believe that I cannot have a fair and impartial trial or hearing before the judge, and that it is made in good faith and not for the purpose of delay

I declare that, to the best of my knowledge and belief, the information herein is true, correct, and complete.

Executed this 26th day of July, 2016.

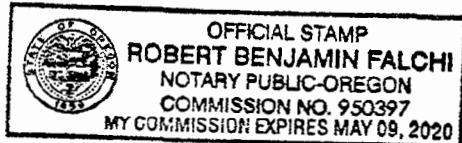


Andrea Olson

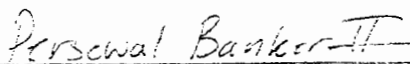
NOTARY ACKNOWLEDGEMENT

STATE OF OREGON, COUNTY OF MULTNOMAH:

This Affidavit was acknowledged before me on this 26th day of July, 2016 by Andrea Olson, who, being first duly sworn on oath according to law, deposes and says that he/she has read the foregoing Affidavit subscribed by him/her, and that the matters stated herein are true to the best of his/her information, knowledge and belief.



Notary Public



Title (and Rank)

My commission expires 05/09/2020

CERTIFICATE OF SERVICE

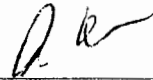
On September 2, 2016, I, Andrea Olson, Plaintiff, am serving Plaintiff's Motion for Appointed Counsel as a Reasonable Accommodation with this Court to the following parties:

Hand-delivered to 7th floor:

Honorable Marco A. Hernandez
Mark O. Hatfield United States Courthouse
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Portland, OR 97204-2944

Regular U.S. Mail:

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Andrea Olson